

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HOWARD ROUBIDOUX**  
Claimant

VS.

**MONFORT, INC.**  
Respondent  
Self-Insured

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Docket No. 195,833

**ORDER**

Claimant requested review of the Award entered by Administrative Law Judge Jon L. Frobish dated March 26, 1996. The Appeals Board heard oral argument on August 22, 1996.

**APPEARANCES**

Claimant appeared by his attorney, Jerry L. Soldner of Garden City, Kansas. The respondent appeared by its attorney, Brad C. Ralph of Dodge City, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Administrative Law Judge found that claimant sustained no permanent injury and, therefore, denied claimant permanent partial disability benefits and future medical treatment. Claimant requested review of that finding. The only issue on review is the nature and extent of claimant's injury and disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds:

The Award entered by the Administrative Law Judge should be modified.

The parties stipulated that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent on or about July 24, 1994. Claimant testified he injured his back on that date while lifting a motor from one of respondent's packaging machines. Both physicians who testified, orthopedic surgeon C. Reiff Brown, M.D., and physiatrist Pedro A. Murati, M.D., indicated that claimant sustained permanent injury and permanent partial functional impairment as a result of the July 1994 injury.

In December 1995, Dr. Brown saw claimant at respondent's request and diagnosed lumbar sprain. Regarding claimant's functional impairment, Dr. Brown testified as follows:

"Soft tissue injuries such as lumbar sprain are not considered compensable by the Guides to the Evaluation of Permanent Impairment."

"The only possible way to assign impairment to a person with a back sprain based on the Guides to the Evaluation of Permanent Impairment is to assign it through use of the range of motion Tables, however the Guides to the Evaluation of Permanent Impairment itself has discredited this man's range of motion studies in that there is inconsistency of effort and the relationship between the straight leg raising and the range of sacral flexion and extension. Therefore, based strictly on the Guides to the Evaluation of Permanent Impairment, there is no permanent impairment."

"I would suggest that this man does have some scar tissue present in the area of torn muscles and ligaments and on that basis he probably has 2% or 3% impairment of the body as a whole on a permanent basis. The work restrictions which were determined by the Functional Capacity Evaluation I agree with. However, I do not agree that these are permanent."

Although Dr. Brown believes the A.M.A. Guides do not recognize sprains as causing permanent impairment, he believes sprains do cause muscle and ligament tissue to tear and stretch, which ultimately causes the formation of scar tissue. According to Dr. Brown, despite the fact claimant did sustain permanent injury, he does not have permanent work restrictions or limitations.

Dr. Murati testified that he first saw claimant in November 1994 and diagnosed chronic lumbosacral strain after an MRI and x-rays ruled out a herniated disk. He believes claimant has a 5 percent whole body functional impairment according to the A.M.A. Guides and, contrary to Dr. Brown, he believes claimant should observe a number of work restrictions and limitations which would restrict claimant to the light and medium labor categories. In forming the latter opinion, Dr. Murati placed great reliance upon a functional capacity evaluation he requested be performed.

Based upon the above, the Appeals Board finds claimant sustained a permanent injury and a permanent partial impairment of function to the body as a whole in the range of 2 to 5 percent. Because we must select a specific number from that range to compute benefits, the Appeals Board finds that claimant has a 3 percent permanent partial whole body functional impairment. Based upon the entire evidentiary record, the Appeals Board finds that claimant has sustained a relatively minor back sprain that resulted in temporary restrictions and limitations only. Because the injury did not result in permanent restrictions and limitations,

claimant's permanent partial disability benefits are limited to his functional impairment rating only. Therefore, claimant is entitled to receive permanent partial disability benefits based upon the 3 percent whole body functional impairment rating.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated March 26, 1996, should be, and hereby is, reversed; that claimant is entitled to receive workers compensation benefits for a work-related accident sustained on or about July 24, 1994, including permanent partial general disability benefits based upon a 3% whole body functional impairment.

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Howard Roubidoux, and against the respondent, Monfort, Inc., for an accidental injury which occurred on July 24, 1994, and based upon an average weekly wage of \$403.80, for 12.45 weeks of permanent partial disability compensation at the rate of \$269.21 per week or \$3,351.66 for a 3% permanent partial whole body impairment of function making a total award of \$3,351.66, which is now due and owing and ordered paid.

Claimant may request future medical benefits upon proper application to the Director.

The remaining orders of the Administrative Law Judge contained in the Award are hereby adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jerry L. Soldner, Garden City, KS  
Brad C. Ralph, Dodge City, KS  
Administrative Law Judge, Garden City, KS  
Philip S. Harness, Director